

## **REMARKS**

### **Status of the Claims**

Claims 1, 4, and 6-22 will be pending in the above-identified application upon entry of the present amendment. Claim 1 has been amended by incorporating the subject matter of claim 5. As such, claim 5 has been cancelled herein. Claims 4 and 6-12 have been amended in view of the amendment to claim 1. Claims 13-22 have been added. Support for new claim 13 can be found in the present specification, *inter alia*, at page 8, lines 19-25 and page 22, lines 19-21. Support for new claim 14 can be found in the present specification, *inter alia*, at page 24, lines 15-17. Support for new claims 15-22 can be found in claims 4 and 6-12, respectively. Thus, no new matter has been added. Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

### **Drawings**

Since no objection has been received, Applicants assume that the drawings are acceptable and that no further action is necessary. Confirmation thereof in the next Office Action is respectfully requested.

### **Objections**

Claim 5 is objected to as being a substantial duplicate of claim 1. Claim 5 has been cancelled herein, which renders this objection moot. As such, Applicants respectfully request that the objection be withdrawn.

### **Issues under 35 U.S.C. § 103(a)**

Claims 1 and 4-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawamoto et al. '994 (US 2003/0021994).

Applicants respectfully traverse. Reconsideration and withdrawal of this rejection are respectfully requested based on the following considerations.

Legal Standard for Determining Prima Facie Obviousness

MPEP 2141 sets forth the guidelines in determining obviousness. First, the Examiner has to take into account the factual inquiries set forth in *Graham v. John Deere*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), which has provided the controlling framework for an obviousness analysis. The four *Graham* factors are:

- (a) determining the scope and content of the prior art;
- (b) ascertaining the differences between the prior art and the claims in issue;
- (c) resolving the level of ordinary skill in the pertinent art; and
- (d) evaluating any evidence of secondary considerations.

*Graham v. John Deere*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966).

Second, the Examiner has to provide some rationale for determining obviousness. MPEP 2143 sets forth some rationales that were established in the recent decision of *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

As the MPEP directs, all claim limitations must be considered in view of the cited prior art in order to establish a *prima facie* case of obviousness. See MPEP 2143.03.

Distinctions over the Cited Reference

Kawamoto et al. '994 disclose an ultrafine particle dispersion composition that is used as an interlayer for a laminated glass (paragraph [0001]).

In contrast, the present invention is directed to a mineral composition used as a mineral supplement in the food product field. Claims 1, 4, and 6-12 are directed to a food or beverage. As such, Kawamoto et al. '994 is not a relevant reference to this field.

MPEP 2111.02 discusses the effects of a preamble on a claim. In *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951), a preamble reciting "An abrasive article" was deemed essential to point out the invention defined by claims to an article comprising abrasive grains and a hardened binder and the process of making it. The court stated "it is only by that phrase that it can be known that the subject matter defined by the claims is comprised as an abrasive article. Every union of substances capable *inter alia* of use as abrasive grains and a binder is not an 'abrasive article.'" Therefore, the preamble served to further define the structure of the article produced.

Similarly, in the present application, it is only by the preamble that it can be known that the subject matter defined by the claims is comprised as a food or beverage. Therefore, the preamble limits the claim and should be considered.

To establish a *prima facie* case of obviousness of a claimed invention, all of the claim limitations must be disclosed by the cited references. As discussed above, Kawamoto et al. '994 fail to disclose all of the claim limitations of independent claim 1, and those claims dependent thereon. Accordingly, the reference does not render the present invention obvious.

Furthermore, the cited reference or the knowledge in the art provides no reason or rationale that would allow one of ordinary skill in the art to arrive at the present invention as claimed. Therefore, a *prima facie* case of obviousness has not been established, and withdrawal of the outstanding rejection is respectfully requested. Any contentions of the USPTO to the contrary must be reconsidered at present.

#### **New Claims 13-22**

Applicants have newly added claims 13-22 in an effort to further define the scope of protection owed to Applicants. Independent claim 13 is directed to an aqueous composition containing water wherein fine particles of metal salts are dispersed in the water. In contrast, ultrafine particles are dispersed in plasticizer in Kawamoto et al. '994. As such, Applicants respectfully assert that claims 13-22 clearly define over the cited reference, and an early action to this effect is earnestly solicited.

#### **Conclusion**

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad M. Rink, Registration No. 58,258, at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

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Respectfully submitted,

By 

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